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KARL FINLEY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KARL FINLEY,

Plaintiff,

v.

COUNTY OF MARIN; MARSHA GRANT;  
DIANE STOKER; and DOES 1 through 50,  
inclusive,

Defendants.

Case No. 07 5922 TEH

**FIRST AMENDED COMPLAINT FOR  
DAMAGES**

VIOLATIONS OF GOVERNMENT CODE  
SECTION 12940, *ET. SEQ.*; VIOLATIONS  
OF TITLE VII OF THE CIVIL RIGHTS  
ACT, 42 U.S.C. §§ 2000e, *ET SEQ.*;  
FAILURE TO PREVENT AND  
INVESTIGATE HARASSMENT;  
VIOLATION OF 42 U.S.C. §§ 1981, 1983,  
1985, *ET SEQ.*; VIOLATIONS OF THE  
CALIFORNIA CONSTITUTION

**JURY TRIAL DEMANDED**

Plaintiff complains and alleges as follows:

**PARTIES AND JURISDICTION**

1. Plaintiff KARL FINLEY is, and at all relevant times hereto, has been a resident of the State of California. Plaintiff FINLEY is, and at all relevant times hereto, has been an employee of defendants within the meaning of California Fair Employment and Housing Act ("FEHA") and Title VII of the Civil Rights Act of 1964, as amended ("Title VII").

2. Defendant COUNTY OF MARIN, including its departments, units, and/or political subdivisions, is and at all relevant times hereto, was an employer operating as public entity within the State of California, County of Marin, who regularly employed more than 15 persons.

1           3. Defendant COUNTY OF MARIN is a county municipality located within the State  
2 of California and doing business as a government entity under color of state authority and law.

3           4. Defendant MARSHA GRANT is an individual whose residence is located in the  
4 State of California. Defendant GRANT is an employee of the COUNTY OF MARIN. For  
5 purposes of the cause of action under the Civil Rights Act, defendant GRANT is being sued in  
6 her individual capacity acting under color of law.

7           5. Defendant GRANT is a supervisor and/or management employee for purposes of  
8 FEHA and/or Title VII. Defendant GRANT was the Nurse Manager for Detention Services, and  
9 was promoted to plaintiff's supervisor in or about July 2006. Defendant GRANT was a relevant  
10 decision-maker for purposes of the adverse employment actions referenced below.

11           6. Defendant DIANE STOKER is an individual whose residence is located in the  
12 State of California. Defendant STOKER is an employee of the COUNTY OF MARIN. For  
13 purposes of the cause of action under the Civil Rights Act, defendant STOKER is being sued in  
14 her individual capacity acting under color of law.

15           7. Defendant STOKER is a supervisor and/or management employee for purposes of  
16 FEHA and/or Title VII. At all relevant times, defendant STOKER was the Clinical Services  
17 Administrator, and was plaintiff's supervisor. Defendant STOKER was a relevant decision-  
18 maker for purposes of the adverse employment actions referenced below.

19           8. This Court has jurisdiction over the subject matter of this action pursuant to 42  
20 U.S.C. Section 2000e-5 and 28 U.S.C. Section 1331.

21           9. This Court has venue over this action pursuant to 42 U.S.C. Section 2000e-5 in  
22 that defendant COUNTY OF MARIN employed plaintiff within the territorial boundaries of this  
23 judicial district.

24           10. This Court has jurisdiction over defendant COUNTY OF MARIN in that it is a  
25 government agency that, at all relevant times herein, employed plaintiff and operated under color  
26 of state authority within this judicial district.



1 his job duties in an outstanding fashion. He was provided with consistent praise regarding his  
2 skills and abilities and received regular merit increases. As a result of his superior performance, in  
3 1999, plaintiff FINLEY was promoted to Supervising Detention Nurse and was provided with  
4 supervisory responsibilities in connection with this new position.

5 17. In approximately 2001, a position opened up for Chief Nurse. During the period  
6 of time that this position opened, plaintiff was qualified to assume the position. Plaintiff applied  
7 for this position and was not selected.

8 18. In June 2006, the position of Chief Nurse re-opened, however was re-titled as  
9 "Nurse Manager." During the period of time that this position opened, plaintiff was qualified to  
10 assume the position. In fact, plaintiff was more qualified than any other applicant for this  
11 position, and was advised by the Chief Medical Doctor of the facility that "if they don't give this  
12 to you, there is a problem." Plaintiff applied for this position and was not selected. Instead,  
13 defendant County of Marin selected defendant GRANT, a less-qualified Caucasian employee that  
14 did not even meet the minimum qualifications.

15 19. Once defendant GRANT became plaintiff's supervisor, she targeted plaintiff's  
16 employment in an attempt to create a record for disciplinary action.

17 20. In approximately July 2006, plaintiff filed an internal complaint with the County's  
18 Equal Employment Opportunity/Affirmative-Action office and Human Resources alleging  
19 discrimination and unequal treatment in the workplace, including the failure to promote plaintiff  
20 to the Nurse Manager position. Plaintiff further advised defendants that the County of Marin has  
21 a pattern and practice of discriminating against African-American employees.

22 21. Once the complaint was filed, defendants failed to take reasonable measures to  
23 investigate the complaint, and further failed to take any reasonable measures to prevent the  
24 discrimination from continuing.

25 22. Moreover, during this period of time and continuing up until the date that plaintiff  
26 filed this legal action, defendant County of Marin has engaged and continue to engage in a pattern  
27 and practice of discrimination, retaliation, and harassment against plaintiff and other similarly  
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1 situated African-American employees based upon their race. The acts of discrimination,  
2 retaliation, and harassment were consistent and pervasive. The discrimination and harassment  
3 targeted black employees, including plaintiff's, promotional opportunities within the County with  
4 the ultimate goal of preventing African-American employees from obtaining high level  
5 supervisory positions, and further created a hostile work environment. The conduct included but  
6 was not limited to (1) inappropriate and unwelcome racial comments, remarks, and slurs, (2)  
7 harassing and retaliating behavior directed against African-Americans for making complaints of  
8 unlawful discrimination in the workplace, (3) targeting plaintiff and other similarly situated  
9 African-American employees with adverse employment actions based upon race, (5) treating  
10 plaintiff and other African-American employees differently than similarly situated employees  
11 based upon race, (6) creating a workplace that is permeated in an unwelcome and hostile work  
12 environment towards African-Americans, (7) failing to promote African-American employees  
13 into management level positions, and (8) enacting policies that have a disparate impact and  
14 treatment towards African-American employees, including plaintiff.

15 23. Once plaintiff filed the internal complaint of discrimination, defendants retaliated  
16 against plaintiff. Defendants took adverse employment actions against plaintiff as a direct result  
17 of his complaints, including but not limited to transferring plaintiff, reducing his work  
18 responsibilities, and creating a hostile environment.

19 24. Moreover, defendant County of Marin has a custom, policy, pattern, and practice  
20 of retaliating against African-American employees that challenge defendant's employment  
21 practices, and file internal complaints of discrimination or unequal treatment. Such conduct and  
22 practice included but was not limited to: (1) acting with hostility towards black employees that  
23 file internal complaints of discrimination; (2) not providing necessary resources to African-  
24 American employees when they request assistance or investigation; (3) ignoring and isolating  
25 African-American employees in the workplace that have made complaints of discrimination; (4)  
26 engaging in harassing and retaliating behavior directed against plaintiff FINLEY and other  
27 African-American employees for making complaints of unlawful race discrimination in the  
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1 workplace, (5) targeting plaintiff FINLEY and other similarly situated African-American  
2 employees with adverse employment actions based upon race and national origin, (6) retaining  
3 biased workplace investigators that do not conduct fair, impartial, and objective investigations,  
4 and only look out for the best interests of the employer, and (7) creating a glass ceiling for  
5 African-American employees that file internal complaints of discrimination or unequal treatment  
6 in the workplace. This pattern and practice has the ultimate goal of preventing minority  
7 employees from obtaining high level supervisory positions, and further created a hostile work  
8 environment.

### 9 10 **FIRST CAUSE OF ACTION**

11 (Race Harassment –All Defendants)

12 25. Plaintiff realleges and incorporates by reference Paragraphs 1 through 24 of this  
13 Complaint as though fully set forth herein.

14 26. California Government Code § 12940 and Title VII of the Civil Rights Act of  
15 1964, as amended, 42 U.S.C. § 2000e et seq., prohibit an employer and any person from harassing  
16 any employee on the basis of race.

17 27. Defendants violated California Government Code § 12940 and Title VII of the  
18 Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq., with regard to plaintiff FINLEY  
19 and other similarly situated employees when they engaged in a pattern and practice of harassment  
20 in the workplace based upon race that was inappropriate, unwelcome, offensive, and created a  
21 hostile work environment.

22 28. As a direct and proximate result of defendants' discriminatory acts, plaintiff has  
23 suffered loss of employment opportunities, loss of dignity, great humiliation, and emotional  
24 injuries manifesting in physical illness and emotional distress.

25 29. Defendants' actions have caused and continue to cause plaintiff substantial losses  
26 in earnings, significant reputation and professional injury, loss of promotional opportunities and  
27 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and  
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1 benefits, costs of suit, embarrassment and anguish, all to his damage in an amount according to  
2 proof.

3 30. With respect to the individual defendants, the acts of these defendants as alleged  
4 herein, were intentional, outrageous, despicable, oppressive, fraudulent, and done with ill will and  
5 intent to injure plaintiff and to cause plaintiff mental anguish, anxiety, and distress. Defendants'  
6 acts were done in conscious disregard of the risk of severe emotional harm to plaintiff and with  
7 the intent to injure plaintiff, constituting oppression, fraud, malice under California Civil Code  
8 §3294, entitling plaintiff to punitive damages against these defendants only.

9 **SECOND CAUSE OF ACTION**

10 (Race Discrimination – Defendant County of Marin)

11 31. Plaintiff realleges and incorporates by reference Paragraphs 1 through 30 of this  
12 Complaint as though fully set forth herein.

13 32. California Government Code § 12940 and Title VII of the Civil Rights Act of  
14 1964, as amended, 42 U.S.C. § 2000e et seq., provide that it is an unlawful employment practice  
15 for an employer to take any adverse employment action or otherwise discriminate against any  
16 person on the basis of race.

17 33. Defendants violated California Government Code § 12940 and Title VII of the  
18 Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. with regard to plaintiff FINLEY  
19 when they wrongfully disciplined, failed to promote, discriminated, and took other adverse  
20 employment actions against plaintiff FINLEY and other similarly situated black employees in the  
21 terms, conditions, or privileges of employment on the basis that plaintiff and other workers were  
22 African-American employees whose skin color is black.

23 34. Defendants' conduct towards plaintiff FINLEY and other similarly situated  
24 employees, as alleged above, constitutes an unlawful employment practice in violation of  
25 California Government Code §12940 and Title VII of the Civil Rights Act of 1964, as amended,  
26 42 U.S.C. § 2000e et seq.





1 of California Government Code § 12940 and Title VII of the Civil Rights Act of 1964, as  
2 amended, 42 U.S.C. § 2000e et seq.

3 41. As a direct and proximate result of defendants' retaliatory conduct, plaintiff has  
4 suffered loss of employment, indignity, great humiliation and emotional distress manifesting in  
5 physical symptoms.

6 42. Defendants' actions have caused and continue to cause plaintiff substantial losses  
7 in earnings, significant reputation and professional injury, loss of promotional opportunities and  
8 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and  
9 benefits, cost of suit, humiliation, embarrassment and anguish, all to his damage in an amount  
10 according to proof.

11 43. With respect to the individual defendants, the acts of these defendants as alleged  
12 herein, were intentional, outrageous, despicable, oppressive, fraudulent, and done with ill will and  
13 intent to injure plaintiff and to cause plaintiff mental anguish, anxiety, and distress. Defendants'  
14 acts were done in conscious disregard of the risk of severe emotional harm to plaintiff and with  
15 the intent to injure plaintiff, constituting oppression, fraud, malice under California Civil Code  
16 §3294, entitling plaintiff to punitive damages against these defendants only.

17 **FOURTH CAUSE OF ACTION**

18 (Failure to Prevent Harassment and Discrimination – Defendant County of Marin)

19 44. Plaintiff incorporates herein by reference all of the allegations contained in  
20 paragraphs 1 through 43 of this complaint as fully set forth herein.

21 45. California Government Code § 12940(k) and Title VII of the Civil Rights Act of  
22 1964, as amended, 42 U.S.C. § 2000e et seq., provide that it is an unlawful employment practice  
23 for an employer to fail to take all reasonable steps necessary to prevent discrimination, retaliation,  
24 and harassment from occurring in the workplace.

25 46. Defendants violated Government Code § 12940 and Title VII of the Civil Rights  
26 Act of 1964, as amended, 42 U.S.C. § 2000e et seq., with regard to plaintiff and other similarly  
27 situated female employees when defendants knowingly and recklessly created a hostile work  
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1 environment for African-American employees, created a “glass ceiling” for African-American  
2 employees and other minorities, engaged in a pattern and practice of discrimination against  
3 African-American and minority employees, failed to conduct reasonable and impartial  
4 investigations when plaintiff and other employees complained about discriminatory conduct on  
5 the part of supervisors and management, and failed to take reasonable steps necessary to  
6 investigate the misconduct and prevent it from occurring and continuing.

7 47. Defendants’ conduct toward plaintiff and other similarly situated employees as  
8 alleged above, constitutes an unlawful employment practice in violation of California  
9 Government Code § 12940 and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.  
10 § 2000e et seq.

11 48. As a direct and proximate result of defendants’ conduct, plaintiff has suffered loss  
12 of employment, indignity, great humiliation and emotional distress manifesting in physical  
13 symptoms.

14 49. Defendant’s actions have caused and continue to cause Plaintiff substantial losses  
15 in earnings, significant reputation and professional injury, loss of promotional opportunities and  
16 other employment benefits, lost wages, attorneys’ fees, medical expenses, future earnings and  
17 benefits, cost of suit, humiliation, embarrassment and anguish, all to his damage in an amount  
18 according to proof.

### 19 **FIFTH CAUSE OF ACTION**

20 (Violations of Civil Rights Laws – All Defendants)

21 50. Plaintiff incorporates herein by reference all of the allegations contained in  
22 paragraphs 1 through 49 of this Complaint as fully set forth herein.

23 51. Defendants actions and failures as alleged above constitute a pattern and practice  
24 of violations of the Civil Rights Laws of the United States, 42 U.S.C. §§ 1981, 1983, 1985.  
25 Defendants while acting under color of state authority and law wrongfully and intentionally  
26 discriminated against, retaliated against, and harassed plaintiff because of his race and because he  
27 opposed practices forbidden under the anti-discrimination laws and equal protection laws of the  
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1 United States. Defendants further failed to provide plaintiff with procedural and substantive due  
2 process regarding adverse employment actions, failure to promote, and investigation into  
3 plaintiff's internal complaints of discrimination. Defendants' conduct, as set forth above,  
4 constitutes violations, under color of law, of plaintiff's rights, privileges, and immunities  
5 guaranteed to them by the First Amendment of the United States Constitution rights of free  
6 speech and to petition the government for redress of grievances, the equal protection clause of the  
7 United States Constitution, and the due process clauses of the Fourteenth Amendment of the  
8 United States Constitution.

9 52. Moreover, there existed a contract of employment between defendants and  
10 plaintiff that was contained in government policies and procedures, and other agreements, and  
11 defendants, acting under color of state authority and law, intentionally and willfully interfered  
12 with plaintiff FINLEY' rights and benefits under that contract on the basis of race in violation of  
13 42 U.S.C. § 1981.

14 53. Defendant's actions have caused and continue to cause Plaintiff substantial losses  
15 in earnings, significant reputation and professional injury, loss of promotional opportunities and  
16 other employment benefits, lost wages, attorneys' fees, medical expenses, future earnings and  
17 benefits, cost of suit, humiliation, embarrassment and anguish, all to his damage in an amount  
18 according to proof.

19 54. As to the individual defendants, the acts of these said defendants as alleged herein,  
20 were intentional, outrageous, despicable, oppressive, fraudulent, and done with ill will and intent  
21 to injure plaintiff and to cause plaintiff mental anguish, anxiety, and distress. The defendants'  
22 acts were done in conscious disregard of the risk of severe emotional harm to plaintiff and with  
23 the intent to injure plaintiff, constituting oppression, fraud, malice under California Civil Code  
24 §3294, entitling plaintiff to punitive damages against these defendants only.

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**SIXTH CAUSE OF ACTION**

(Violations of the California Constitution – Defendant County of Marin)

55. Plaintiff incorporates herein by reference all of the allegations contained in paragraphs 1 through 54 of this Complaint as fully set forth herein.

56. The California Constitution, Article I, Section 7, provides that a public entity may not deprive a person of a property or liberty interest without due process of law, and must provide equal protection to its employees.

57. In acting herein, defendant County of Marin violated plaintiff's due process and equal protection rights in failing to provide plaintiff with adequate procedural and substantive due process prior to engaging in adverse employment actions against plaintiff, and treating plaintiff in an unequal manner in the workplace.

58. As a result of defendant's actions, plaintiff seeks equitable and injunctive relief, including but not limited to back-pay.

**PRAYER FOR RELIEF**

Wherefore, plaintiff prays for judgment against Defendants, and each of them as follows:

1. For general damages in an amount according to proof;
2. For special damages in an amount according to proof;
3. For punitive damages against the individual defendants;
3. For prejudgment interest in an amount according to proof;
4. For equitable and/or injunctive relief according to proof,
5. For reasonable attorney's fees and cost of suit therein;
6. For such other and further relief as the court may deem proper.
7. **Plaintiff hereby demands a trial by jury.**

Dated: May 5, 2008

KAHN BROWN & POORE LLP

By: \_\_\_\_\_/s/

David M. Poore

Attorneys for Plaintiff